

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AMENDING CHAPTER 3.16,
"TRANSIENT OCCUPANCY TAX," TO CLARIFY
PROCEDURES**

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS
FOLLOWS:

SECTION 1. SECTION 3.16.030 AMENDED. Subsection 3.16.030(7) of the
Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.030. Definitions.

Except where the context otherwise requires, the definitions given
in this section govern the construction of this chapter:

(1)-(4) [Text unchanged.]

(5) "Rent" means the consideration charged, whether or not
received, for the occupancy of space in a hotel valued in money,
whether to be received in money, goods, labor or otherwise, including
all receipts, cash, credits and property and services of any kind or
nature, ~~without any deduction therefrom whatsoever.~~ An operator
may provide complimentary non-taxable rooms for promotional
purposes not to exceed 1% of the occupied rooms in any reporting
month. Should the complimentary rooms provided exceed the 1%
corridor, the promotional value for tax purposes shall be considered
to be the average daily rate for the day the complimentary room was
used.

(6) [Text unchanged.]

(7) "Transient" means any individual who exercises occupancy or
is entitled to occupancy by reason of concession, permit, right of
access, license or other agreement for a period of thirty consecutive
calendar days or less, counting portions of calendar days as full days,
and including any individual who actually physically occupies the
premises, by permission of any other person entitled to occupancy.
The tax must be paid on each day's stay through thirty consecutive
days. Once an individual has exercised occupancy or been entitled to
exercise occupancy for more than thirty consecutive calendar days,
transient status ceases for the remainder of the uninterrupted stay.

SECTION 2. SECTION 3.16.050 AMENDED. Section 3.16.050 of the
Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.050. Exemptions.

No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which it is
beyond the ~~power~~authority of the city to impose the tax herein
provided;

(b) Any federal or state of California officer or employee on business who shall pay rent by warrant or check drawn on the Treasury of the United States or the state of California or who provides written evidence of such official business on an official exemption claim form approved in advance by the tax administrator; ~~Copies of the documentation for each exemption claimed must be submitted to the tax administrator with each return made pursuant to Section 3.16.080.~~

(c) Any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty;

(d) Any person who exercises occupancy or who has been entitled to exercise occupancy for a period in excess of thirty consecutive calendar days;

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator. Operators must maintain records of exemptions in accordance with Section 3.16.120 and the documentation for each exemption claimed shall be submitted to the tax administrator upon request.

SECTION 3. SECTION 3.16.070 AMENDED. Section 3.16.070 of the Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.070. Operator--Registration.

~~Within thirty days after May 13, 1965, or w~~Within thirty days after commencing business, ~~whichever is later,~~ each operator of any hotel renting occupancy to transients shall register the hotel with the tax administrator and obtain from him a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued;

(d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit."

SECTION 4. SECTION 3.16.080 AMENDED. Section 3.16.080 of the Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.080. Operator--Reporting and remitting tax collected.

Each operator shall, on or before the last day of the month following the close of each ~~calendar quarter~~reporting month, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided ~~by him~~, of the total rents charged ~~and received~~ and the amount of tax ~~collected~~due for transient occupancies. At the time the return is filed, the full amount of the tax ~~collected~~ shall be remitted to the tax administrator. If the operator fails to collect the rent or the tax, the city may require the operator to pay the tax. To be deemed timely filed and remitted, returns and taxes must be received by the tax administrator on or before the last day of the month following the applicable reporting period. A postmark is insufficient. The tax administrator may establish shorter reporting periods for any certificate holder if ~~he deems~~it necessary in order to insure collection of the tax and ~~he may~~ require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

SECTION 5. SECTION 3.16.090 AMENDED. Section 3.16.090 of the Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.090. Delinquency--Penalties and interest.

(a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall be required to pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax, unless waived for good cause by the tax administrator.

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall be required to pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed unless waived for good cause by the tax administrator.

(c) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall be required to pay interest at the rate of ~~one-half of one~~ percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid unless waived for good cause by the tax administrator.

(e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

SECTION 6. SECTION 3.16.100 AMENDED. Section 3.16.100 of the Sunnyvale Municipal Code is hereby amended to read as follows:

**Section 3.16.100. Failure to collect and report tax --
Determination of tax by tax administrator.**

If any operator fails or refuses to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his ~~an~~ estimate of the tax due. As soon as the tax administrator shall procure such facts and information ~~as he is able to obtain~~ upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he the tax administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his ~~the~~ last known place of address. Such operator ~~may~~ shall within ten business days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five business days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator ~~may~~ shall appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen business days

unless an appeal is taken as provided in Section 3.16.110.

SECTION 7. SECTION 3.16.110 AMENDED. Section 3.16.110 of the Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.110. Appeal.

~~Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the determination of tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.~~

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may, within ten business days after the serving or mailing of such notice, make application in writing to the city manager for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the city manager shall give not less than five business days written notice in the manner prescribed in Section 3.16.100 to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the city manager shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed above of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen business days unless an application for appeal to the city council is made.

Any operator aggrieved by any decision of the city manager with respect to the amount of such tax, interest, and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen business days of the serving or mailing of the determination of tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of

notice of hearing. any amount found to be due shall be immediately due and payable upon the service of notice.

SECTION 8. SECTION 3.16.120 AMENDED. Section 3.16.120 of the Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.120. Operator--Records required.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as ~~he~~the operator may have been liable for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times. Such records shall be maintained at the operator's premises or shall be available for delivery to the tax administrator within one week after request. The records shall include at least the following:

- (a) Daily summaries of room occupancies;
- (b) A record of each occupancy charge for which an exemption is claimed, including the name of the individual occupying the room, dates of occupancy, and reasons for exemption, including the official exemption claim form and all supporting documentation;
- (c) Lists of bad debts claimed for exemption, including names and addresses of debtor and amount of room rent unpaid.

SECTION 9. SECTION 3.16.140 AMENDED. Section 3.16.140 of the Sunnyvale Municipal Code is hereby amended to read as follows:

Section 3.16.140. Actions to collect.

(a) Debt Owed. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. If the operator fails to collect the rent or the tax, the city may require the operator to pay the tax. Any such tax ~~collected~~owed by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city of Sunnyvale for the recovery of such amount.

(b) Recording of a Certificate of Lien. Once the appeal timeframe has elapsed, if any amount required to be paid to the city under the provision of this chapter is not paid when due, the tax administrator may record in the office of the Santa Clara County Recorder a certificate which specifies the amount of tax and penalties due (including interest), the name and address of the operator liable for the same, a statement that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be paid and a legal description of the real property owned

by the operator. From the time of the recording of the certificate, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the county owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect and priority of a tax lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.

(c) Court Order for Collection of Tax. At any time within three (3) years after the recording of a certificate of lien, the tax administrator may obtain a court order directed to any sheriff or other enforcer for the enforcement of the lien and the collection of any tax and penalties required to be paid to the city under this chapter. The tax administrator may pay or advance to the enforcer such fees, commissions, and expenses for services as are provided by law.

(d) Seizure and Sale. As an alternative to obtaining a court order, at any time within the three (3) years after an assessment was issued or a certificate of lien was recorded, the tax administrator may collect the delinquent amount either by seizing or causing to be seized any property, real or personal, of the operator and selling any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and interest and any costs incurred on account of the seizure and sale, or by placing the amount of the debt due on the assessment roll for that particular property if owned by the operator and that amount shall be collected with all other taxes upon the property. Such amounts shall be collected at the same time and in the same manner as general city taxes are collected and shall be subjected to the same penalties and interest, and the same procedure and sale in event of delinquency as provided for city taxes. All laws and ordinances applicable to the levy, collection and enforcement of city taxes are hereby made applicable. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

SECTION 10. SECTION 3.16.145 ADDED. Chapter 3.16 of the Sunnyvale Municipal Code is hereby amended by adding a new Section 3.16.145 to read as follows:

Section 3.16.145. Sale, transfer or cessation of business.

(a) Notices Required. An operator who is selling, transferring, or terminating its business shall notify the tax administrator in writing of such sale, transfer or termination, and the name and address of the purchaser or transferee at least thirty (30) calendar days in advance of the date of sale, transfer, or termination, unless the decision to sell, transfer, or terminate was made within less than a thirty (30) calendar day period prior to the sale, transfer, or termination, in which case the operator shall then immediately notify the tax administrator. The operator shall also notify the escrow

officer of the city's requirement to withhold in escrow an amount equal to the average of the tax due from the most recent three months returns and provide the escrow officer with a copy of this chapter. Those funds shall be held in escrow until the escrow officer receives a city-issued tax clearance certificate. Funds may then be distributed net of any tax, interest and penalties due to the city.

(b) Successor Operator. If an operator who is liable for any tax or penalties under this chapter sells or otherwise disposes of a business, the successor shall notify the tax administrator of the date of purchase at least thirty (30) calendar days before the date of purchase or, if the decision to purchase was made less than thirty (30) calendar days prior to the actual sale, then immediately. If there is no escrow, successor operator —shall withhold a sufficient portion of the purchase price to equal the average of such tax, penalty and interest due from the most recent three months of returns until the selling operator presents a city-issued tax clearance certificate showing that all tax, penalties, and interest due have been paid. If the seller does not present a tax clearance certificate—within thirty (30) calendar days after such successor commences to conduct business, the successor shall deposit the withheld amount with the tax administrator pending settlement of the account of the seller. If the successor to the business fails to withhold a portion of the purchase price as required, it shall be liable to the city for the payment of the amount required to be withheld. Within (30) calendar days after receiving a written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the tax administrator shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the tax administrator of the estimated amount of the tax, penalties, and/or interest that must be paid as a condition of issuing the certificate.

(c) Cessation of Business. Each operator upon cessation of business for any reason shall, on or before expiration of thirty (30) calendar days, submit a return to the tax administrator, on forms provided by the tax administrator. At the time the return is filed, the full amount of the balance of the tax, penalties and interest due, if any, shall be remitted to the tax administrator. After filing the final return and remitting the balance due, the operator shall make all records of account available for a closeout audit by the tax administrator, or designee, if requested to do so by the tax administrator. Returns filed and taxes remitted and actually received by the tax administrator on or before expiration of thirty (30) calendar days following the cessation of business shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 3.16.090.

SECTION 11. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 12. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 13. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 14. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in an adjudicated newspaper of general circulation in the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held _____, 2005, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2005, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney